

- Actual damages or \$10,000, whichever is greater, for negligent violations, in addition to any penalty specified in CC §1786.20. CC §1786.50(a)(1).
- Punitive damages in cases of grossly negligent or willful violations. CC §1786.50(b).
- Reasonable attorneys' fees and costs. CC §1786.50(a)(2).

However, there is no liability if the agency can show that the violation resulted in a more favorable report than if the violation had not occurred. CC §1786.50(c). Generally, actions brought under this Act must be filed within two years from the date of discovery. CC §1786.52. The consumer may also bring an action for defamation or invasion of privacy. CC §1786.52.

An agency that is being sued or has been successfully sued under the federal Fair Credit Reporting Act (15 USC §§1681n, 1681o) may not be sued under this Act for the same violation. CC §1786.52(a)–(b).

C. The Holden Credit Denial Disclosure Act of 1976 (CC §§1787.1–1787.4)

1. [§5.60] Coverage of Act; Requirements

Creditors who regularly extend credit or arrange for the extension of credit must, within 30 days of receipt of a written application for credit, notify the applicant of their decision. CC §1787.2(a).

If credit is denied, the consumer must be given a specific statement of reasons for the denial either orally or in writing. CC §1787.2(b).

Any waiver of the provisions of the Act is contrary to public policy, and is void and unenforceable. CC §1787.4.

2. [§5.61] Remedy

A creditor who fails to comply with the requirements of CC §1787.2 is liable for actual damages sustained by the consumer (CC §1787.3(a)) and reasonable attorneys' fees and costs (CC §1787.3(c)); in certain circumstances, the court may also award punitive damages not exceeding \$10,000. CC §1787.3(b). The consumer must bring the action within two years from the date of the violation. CC §1787.3(e).

D. Rosenthal Fair Debt Collection Practices Act (CC §§1788–1788.33)

1. [§5.62] Purpose and Coverage of Act

The purpose of Rosenthal Fair Debt Collection Practices Act is to

prohibit debt collectors from engaging in unfair or deceptive acts in consumer debt collection and to require debtors to act fairly in entering into and honoring debts. CC §1788.1. The Act applies to anyone who regularly engages in debt collection for themselves or others, except attorneys. CC §1788.2(c). Attorneys and their employees who are employed primarily to assist in the collection of a consumer debt owed to another are regulated by Bus & P C §6077.5.

See also federal law (the Federal Consumer Credit Protection Act) at 15 USC §§1692–1692o. The purpose of the federal Act is to eliminate abusive debt collection practices, to ensure that those debt collectors who do not engage in abusive debt collection practices are not competitively disadvantaged, and to promote consistent state action to protect consumers against debt collection abuses. 15 USC §1692. Debt collectors must comply with federal law in collecting or attempting to collect consumer debts. CC §1788.17. Any waiver of the provisions of the Act is contrary to public policy, and is void and unenforceable. CC §1788.33.

2. [§5.63] Debt Collector's Responsibilities

A debt collector may not collect or attempt to collect debts by

- Using or threatening to use force, violence, criminal means, or other types of threats. CC §1788.10.
- Using obscene or profane language or unreasonable or harassing telephone practices. CC §1788.11.
- Communicating information about the debtor to others except in certain specified situations. CC §1788.12.
- Making false representations of any kind. CC §§1788.13–1788.14.
- Obtaining an affirmation of debt from a bankrupt by deception, attempting illegally to collect a collector's fee, or communicating with the debtor when he or she is represented by an attorney. CC §1788.14.
- Using judicial proceedings when the debt collector knows that service of process has not been legally effected or when brought in an improper venue. CC §1788.15.
- Sending a communication that falsely simulates legal or judicial process. CC §1788.16.
- Contacting debtors between 9:00 p.m. and 8:00 a.m. or harassing debtors with threats of violence, arrest, etc. See CC §1812.700(a).

A debt collector must cease all collection activities on receiving specified documents indicating that the debtor has been a victim of identity theft. CC §1788.18. The documents include a copy of the police report and a written statement by the debtor that the specific debt being collected is a result of identity theft. CC §1788.18(a).

In addition, a debt collector must notify debtors of certain proscribed collector practices such as threatening violence or contacting debtors at night, and this notice must be included with the first written collection notice received by the debtor. CC §1812.700(b).

An automobile mechanic attempting to collect repair and storage fees from a car owner is not a “debt collector” under the Rosenthal Fair Debt Practices Collection Act, nor is the automobile repair situation a “consumer credit transaction,” even if the owner owes money to the repairer. *Gouskos v Aptos Village Garage, Inc.* (2001) 94 CA4th 754, 114 CR2d 558.

3. [§5.64] Debtor’s Responsibilities

The consumer may not

- Apply for credit without having the ability or intention to pay the obligation, or submit false or inaccurate credit information. CC §1788.20.
- Fail to notify a creditor of a change in name, address, or employment, if this responsibility has been disclosed in writing by the creditor. CC §1788.21.
- Use an account that has been terminated or suspended, or fail to notify a creditor of the loss or theft of a credit card, if these responsibilities have been disclosed in writing by the creditor. CC §1788.22.

4. [§5.65] Relief Available; Defenses

A debt collector who willfully and knowingly violates the Act is liable for the consumer’s actual damages (CC §1788.30(a)), a penalty of not less than \$100 nor more than \$1000 (CC §1788.30(b)), and reasonable attorneys’ fees and costs (CC §1788.30(c)). However, the debt collector has no liability if it can show that it took steps within 15 days of discovering or being notified of the violation to cure it (CC §1788.30(d)), or that the violation was not intentional and occurred despite the maintenance of procedures designed to prevent it (CC §1788.30(e)). A prevailing creditor may recover reasonable attorneys’ fees and costs if the court finds the debtor’s prosecution or defense of the action was not in good faith. CC §1788.30(c).

If the debtor intentionally violated his or her responsibilities, the debt